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Academic Freedom in the 1990s

ACADEMIC FREEDOM IN THE 1990s†

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It is not easy to discuss the academic freedom situation in general in the United States today. Approximately 3500 institutions warrant being considered "institutions of higher education," but they fall into very different categories, from elite private research universities to community colleges. The situation is very different in, for example, selective liberal arts colleges from what it is in urban community colleges, though some common elements (concern over sexual harassment, minority rights and sensitivities) are probably universal. Matters differ in different fields: the culture of business schools, engineering schools and physics departments is very different from that in the humanities and social sciences. No recent major studies exist that are equivalent to those carried out in the 1950s and 1970s, previous periods of zealotry (to use Neil Hamilton's useful phrase)[1] that permit us to make any estimates of the problem of academic freedom and how it differs in various fields and types of institutions. We might all agree that one useful project that should be undertaken is a study of faculty and pressures placed upon them, similar to those conducted in the 1950s by Lazarsfeld and Thielens[2] and in the 1970s by Ladd and Lipset.[3]

In the absence of such a study, one is limited, generalizations are difficult to make—though we all make them—and one tends to concentrate on the institution one knows best, hoping that at least some of what goes on there is typical and gives some sense of the state of academic freedom generally. I suspect however that Harvard University, where I have been for more than twenty-five years, is probably the worst place from which to

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† This article is based on a speech given by Professor Glazer at the Academic Freedom Symposium.

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1. *See generally* NEIL HAMILTON, ZEALOTRY AND ACADEMIC FREEDOM: A LEGAL AND HISTORICAL PERSPECTIVE (1995).

2. PAUL LAZARSFELD & WAGNER THIELENS, THE ACADEMIC MIND (1958).

3. EVERETT C. LADD, JR. & SEYMOUR M. LIPSET, THE DIVIDED ACADEMY (1975).

consider the distinctive issues that the zealotry of today raises for academic freedom. While incidents at Harvard figure in the canon of anecdotes and accounts[4] relating to abuses of academic freedom today, the most egregious incidents have not taken place there. Harvard's former President, Derek Bok, was no cheerleader in the movement to subject speech by students and faculty to academic discipline, as have been some other university presidents. He thought the First Amendment, as interpreted by the courts, was good enough for the purpose of defining the bounds of allowable speech on campus, in the classroom, and in society generally. He believed the First Amendment allows a great deal more speech on campus than I would consider proper. Bok also resisted the popular demand, which few other university presidents did, that the university withdraw its endowment's investments from companies doing business in South Africa. As a result, he underwent the unpleasant experience of being surrounded, followed, and harassed by students demanding that Harvard join the divestment bandwagon. His successor, President Rudenstine, has had no problem, up to now, resisting student demands for ethnic study programs. One hopes that the examples of his strong-minded predecessors will be followed, should more difficult issues arise.

Harvard students may be different in the strains they put on administrators. They have not yet engaged—and probably will not—in the unpleasant radical actions in support of their demands, such as occupying the President's office, that have been seen at other universities. I do not think Harvard's students are any less inflamed by the issues of race, sex and sexual orientation—pro or con—that sustain zealotry on other campuses, but there may be a touch more support for civility. If my views seem too complacent and if I consider the situation regarding academic freedom in general to be better today than it has ever been, you may, if you wish, ascribe it to my viewing the situation from an institution in which the worst has not yet happened—such as professors being investigated and losing their jobs for alleged sexist or racist statements, or the student newspaper being confiscated and its editors held under siege by student militants because of supposed racism.

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4. *See, e.g.*, DINESH D'SOUZA, ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS, 194-229 (1991).

Nevertheless, what I consider today's distinctive characteristic bent in the issue of academic freedom in the nineties is present at Harvard, and elsewhere. That distinctive bent is self-censorship by the faculty on the key issues of race, gender and sexual orientation in order to avoid controversy. Self-censorship, a distinctive issue in academic freedom, is, of course, not a new issue. In previous ages of academic zealotry, when the major issue was religious unorthodoxy, support of socialism, criticism of foreign policy or support of Communism, there was plenty of self-censorship by faculty and perhaps by students. But in these previous ages, self-censorship was resorted to in order to avoid serious consequences, such as being dismissed by the trustees, expelled by the administration, or attracting the attention of state legislative and congressional investigating committees, with the ultimate threat of possible imprisonment on grounds of perjury and the like. These serious consequences were worth avoiding. Today, I feel that self-censorship is invoked mainly for convenience, because the penalties are much more modest: perhaps some degree of social ostracism by one's colleagues (and there are such cases), unfair treatment by colleagues and administration, and in extreme situations, threat to jobs.

Today, when we deal with these controversial issues, the faculty member often does not speak out when issues touch his or her own field, where one has some duty to engage in discussion. He also does not speak out on issues in unrelated or distantly related fields, where the obligation to take a stand is less, since one is not supposed to be an expert in these areas. However, one's duties as a citizen of an academic community in which these issues are being debated, should compel more faculty members to be involved. Take, for example, the case of Mary Lefkowitz, who spoke up to challenge the nonsensical assertion in a public lecture at Wellesley College by a supposed expert on ancient Egypt that Aristotle stole his ideas from the library of Alexandria, which had not yet been established when Aristotle authored his works. The alleged expert's point was that black civilization, as he asserted Egypt was, had gotten there first. Others could have joined Lefkowitz in speaking against such fantasy but did not. Because the speaker was disputed by only one faculty member, the students who took this visitor's nonsense seriously were left to believe he had a point. An attempt to establish truth was reduced to a contretemps between two

experts holding different positions.[5] Mary Lefkowitz could have bit her tongue, then and later, when a colleague began to use the scurrilous Nation of Islam text on the relations between Jews and blacks throughout history. In so doing, one avoids entering into controversy and dealing with matters that, one can say, are beneath one's notice. This is the attraction of self-censorship. Mary Lefkowitz undertook a difficult and demanding task and in doing so contributed to the education of students at Wellesley.

In the past, it was those with the unorthodox positions, whether in religion, politics, or international affairs, who did not speak out, but censored themselves. Today, it is characteristically those with more traditional positions who do not speak out. This is the case, I believe, in major research universities, state universities and colleges, leading liberal arts colleges, and urban community colleges, which make up, by far, the largest part of American higher education. Undoubtedly, one can still find institutions, generally religiously affiliated or minor ones most people have not heard of, where self-censorship is undertaken, as it commonly was in the past, by the progressive, radical or unorthodox faculty members who may fear institutional retribution. John K. Wilson has uncovered his own canon of outrages by conservative institutions to put against those that D'Souza and Bernstein have recorded.[6] In conservative institutions, a few exist today in higher education, one can well believe that radicals and gay and lesbian faculty members may find it the better part of wisdom to keep their views to themselves and their associations very private. But these institutions are few and hardly visible. Even Catholic and Baptist institutions today are affected by the dominant cultural trends—feminism, women's rights, minority rights and sensitivities.

The few conservative institutions are not representative of what is happening in academia generally. As David Riesman put it a long time ago, academia can be compared to a boa constrictor swallowing a pig, in that matters long settled at the head of the snake are still visible as issues long down toward the tail. In the institutions that make up three-quarters or more of American

5. *See* MARY LEFKOWITZ, NOT OUT OF AFRICA (1995).

6. *See* JOHN K. WILSON, THE MYTH OF POLITICAL CORRECTNESS (1995). The reference is to Dinesh D'Souza, *see supra* note 4, and Richard Bernstein, *Dictatorship of Virtue* (1994).

higher education, I cannot imagine Marxist views (whatever they may consist of in these latter days, when only North Korea and Cuba survive as avowedly Marxist states), socialist views, anti-religious views, or support of rights for gays and lesbians, by anyone, faculty or students, being any kind of issue. It is rather the opposite views—opposition to abortion based on religion, or skepticism about the value of placing gays and lesbians under the legal protection from discrimination we have enacted for minorities and women, or indeed skepticism about the legal measures that now protect minorities and women—that are likely to be censored by faculty, whether in class or in public discussion.

The issue has been very well analyzed by Glenn Loury.[7] As he puts it: "It is not the iron fist of repression but the velvet glove of seduction that is the real problem."[8] Many of us do not say what we believe or what we know to be true, not because we are afraid of specific consequences that may harm us, but because we are concerned about the good opinions of fellow-academics, our students, or the surrounding community. Clearly, what will affect those good opinions will vary from institution to institution. But, as we know, the academy on the whole is more liberal than the community as a whole. This difference is evident when we compare faculty opinions with those of Americans in general: more call themselves liberal, fewer call themselves conservative. This distinctive academic environment is even more marked in certain parts of higher education—social scientists and humanists generally are more liberal than engineering or business faculty, and elite universities are more liberal than others. While there have been changes, this overall pattern has remained constant since the major survey of faculty conducted by Lipset and Ladd in the early 1970s, and this greater liberalism is found when we look at specific issues, such as affirmative action or presidential preferences.[9]

Desiring to stay in the good graces of one's community by muting one's opinions and beliefs is not altogether a bad thing, and pronouncing loudly on every subject, whatever offense one gives to one's students or one's fellow faculty members, is not

7. *See generally* Glenn Loury, *Self-Censorship*, 4 PARTISAN REV. 608-20 (1993).
8. *Id.* at 609.
9. *See* LADD & LIPSET, *supra* note 3.

altogether a good thing. There are considerations that properly lead us to censor ourselves. We may not want to give unnecessary offense to our students who, we suspect, may be offended by our views or who may, if they know our views on disputed issues, mute their expression to remain in good favor. We may not want to introduce more discord into collegial relations than necessary. Yet, when a general uniformity of opinion on important issues prevails, and particularly when this uniform opinion tends to be held with some intensity, the silencing effect of self-censorship can have negative effects. Self-censorship can deceive our students and our colleagues into thinking that their fellow-citizens are totally misguided, or subjected to false consciousness by powerful media and political interests, and for this reason may not take seriously the possibility that they may be wrong. The fact that the few Harvard faculty members who were for Ronald Reagan did not speak up (two did, and identified themselves with his campaign, but that is an indication of how many did not) undoubtedly contributed to the general astonishment in Cambridge that he was elected—as one commonly heard, "I do not know anyone who voted for him."

The effects of self-censorship on students and their views of the world can be more serious. In the late 1970s, because I had written a book critical of affirmative action,[10] I was often asked to participate in discussions of affirmative action. There seemed to be no shortage of advocates on one side of this issue, and often those advocates were employees of the university responsible for implementing affirmative action. Generally, no one but I spoke in criticism of certain affirmative action policies, and I had to choose a number of times between taking the unpopular position once again on an issue on which I had already written and spoken, or resigning myself to the possibility that no one else would present the arguments against affirmative action.

This could only contribute to a distorted view of popular opinion on this matter among minority students, and I believe they did have such a distorted view since they may never have heard anyone speak against affirmative action. Because they had not heard any arguments against it, they considered opposition an extreme or extremist position held only by racists and kooks.

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10. NATHAN GLAZER, AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY (1975).

This conclusion only encouraged them to express their strong support of affirmative action, which one would think inhibited their classmates from expressing their doubts, whether these were mild or strong. As a teacher, when one knows a position will surprise, offend or even outrage students, one hesitates to express it. And this hesitation is particularly true when the position affects one group of students especially because of race, gender, or sexual orientation. "In your face" expression may be the way in talk shows, but it is not the way in teaching or in public discussion where one hopes to have some effect on those who hold other views.

I found it easier to make the case against affirmative action in a student meeting than in a class, and I have often wondered why. For one thing, the mere fact that the public meeting was announced as one dealing with this subject freed one—indeed required one—to present one's views. In a classroom, the controversial issue might be only one of a number of topics that could be raised in connection with the subject of the course, and there might be a gratuitous factor, depending on the state of the issue at the time, in raising it. For another, in the public meeting one spoke to an audience of people one had not seen before, and would not see again, while in a classroom one knew one would have to live with the students all term; therefore one tried to find formulations that would lessen the tension. This position should be distinguished from cowardice, though, of course, there can be simple cowardice in not raising difficult issues and it could be justified by arguing, as Glenn Loury does, that in certain contexts the flat assertion of views and positions does not educate or inform, but only creates tension and conflict. This argument would not justify lying about one's views or avoiding topics, but would suggest that the manner in which issues are raised and views presented could well be modified. Individuals vary greatly in their tolerance for tension and conflict. Some teachers seem to revel in it, and, on occasion, I think the straightforward approach they take is better than mine.

These concerns also led me on occasion to wonder whether I should not also refrain from mentioning certain facts. In the debates at the time over affirmative action, the U.S. Supreme Court decision in the *Bakke*[11] case often came up. In Justice

11. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

Powell's opinion, he refers to the relative standing of medical college admission tests for the plaintiff, Bakke, who had been rejected by the medical school of the University of California at Davis, and of the minority students who had been admitted under the school's affirmative action program.[12] Bakke's scores were in the ninetieth percentile while the special minority students admitted had scores in the thirtieth and fortieth percentile.[13]

Presenting these facts at one meeting, I recall an audible gasp from a largely minority audience. Presumably, there are those who would be pleased at producing such an effect. I was not. This disparity was so shocking that in subsequent meetings I was tempted to shy away from it. Was I concealing important information from the students? One could say that. There was also such a thing as a blow to their self-esteem, insofar as they saw themselves as standing for their group, and the consequences of this might not be positive. Perhaps the effect of the shock would lead to further discussion which could be fruitful, such as: how effective are the tests?, are there alternatives?, is this the way future physicians should be selected?, et cetera. At some point in such discussions, if one believes in the good will of those with whom one is engaged in discussion, one tries to find some common ground (this is another way in which classes and serious campus discussions are different from talk shows). I often wonder whether I tried to find this common ground too early, from the point of view of either good education or good group relations. I suspect I did. And yet at the time I was the most outspoken person on campus—indeed the only outspoken person—on this issue. Whatever the defects of my approach, it was the only one available at the time.

I could pursue this theme of self-censorship with further personal examples, but I would now like to broaden it to consider the larger question of its relationship to academic freedom. Clearly, my academic freedom was in no way inhibited nor was I punished in any way. Probably some students chose not to enroll in my classes because of my views. I have heard that. One faculty member reported to another her discomfort at continuing to teach a course with me, which may have been

12. *Id.* at 276.
13. *Id.*

because of my views. I suspect that there were certain faculty committees dealing with race and minority issues on which I was not placed, despite my interest in and knowledge of these issues, because my views were considered too extreme; administrators might well have been concerned that this would lead to a degree of disharmony in the group. But the more interesting issue is: why were there so few speaking on these issues, and to what extent were the faculty censoring their views? I think this self-censorship was widespread and common. In many cases, there was the excuse, "It's not my field." It is also true that these issues directly impinged on academic matters, and faculty had to, in one way or another, take a stand.

We do not know how much such self-censorship has occurred, but I believe there has been a good deal. Since we have no survey of the scale of those studies that Paul Lazarsfeld and Wagner Thielens conducted in the 1950s,[14] we have no way of estimating how widespread it is. I am not speaking about self-censorship in expressing prejudice. If such expressions have been inhibited by self-censorship because of concern for one's colleagues, then one would think that such censorship is for the good. I am speaking of reasoned opinion held on the basis of consideration of the known facts. When such opinion is censored, it cannot be for the health of the university and college.

In recent years, for example, there has been a persistent issue raised at Harvard about the university's ROTC program. The faculty insisted on withdrawing from the program during the Vietnam years, but in later years it was resuscitated in a minimal form. Harvard students could enroll in the program, but they would have to take their training at MIT, to which Harvard paid a fee for this purpose. In recent years, gay and lesbian faculty members have led an assault on the ROTC program charging discrimination against gays and lesbians. A committee was set up to review the matter. It proposed in a report that if the "discriminatory" armed services policy persisted, Harvard should sever all relations with ROTC, and that it should go so far as to prevent Harvard's ROTC students, who were graduating and becoming officers, from receiving their commissions at a ceremony on campus. It goes without saying

14. *See* LAZARSFELD & THIELENS, *supra* note 2.

that such a committee would have gay and lesbian representation, but I do not believe anyone was appointed who was known to have a position in favor of the ROTC affiliation. There was some uneasiness in the faculty at accepting the committee's report. In fact, a substantial minority voted against the proposal to ban the commissioning of graduating student officers on university property. Only one faculty member, Harvey Mansfield, made a lengthy and reasoned presentation in opposition to the report, and two others spoke against parts of the report. Where were the others?, one wondered. One can ask the same question of the faculty in many other disputed areas.

A final issue of self-censorship: Withdrawing from the teaching of a course on a topic on which one is a specialist because one has been criticized by members of a minority group on grounds of tone or content. There are two cases of this sort discussed in D'Souza's *Illiberal Education*, that of Stephen Thernstrom at Harvard, and of Reynolds Farley at the University of Michigan.[15] I am not sure all of D'Souza's facts or inferences are correct in his brief statement of these two cases, so I refer to them as examples of a problem, rather than to take any position on the actions the two faculty members took. In both cases, distinguished scholars who came under attack decided not to continue teaching the course for which they were attacked. In both cases the withdrawal from teaching the course was apparently voluntary.

One assumes there have been other such cases, and probably many more of faculty who do not teach a course because they expect there might be problems raised by students who object to their point of view. This is possibly the most serious example of how self-censorship in response to the present wave of zealotry affects the climate on the campus. It restricts what is said and written and taught, not because of the direct sanctions that might be imposed, but because the climate of opinion means one must be engaged in controversy, with its costs in time, in social relationships, and in career opportunities. But it is not easy to know how to deal with this problem. However we buttress the protection of academic freedom, when people feel passionately about certain matters there will be costs to taking an opposite position. At the least we should insist that

15. D'SOUZA, *supra* note 4, at 148-51, 194-97.

these costs not be imposed by administrative or other formal action. And when we take the unpopular position, we should be ready to risk and endure the discomfort that may come as a consequence. Fortunately they are more modest today, for the most part, than ever before.